

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

Chapter 9

CITY OF DETROIT, MICHIGAN,

Case No. 13-53846

Debtor.

Hon. Steven W. Rhodes

**BRIEF IN CONCURRENCE OF CREDITORS DWAYNE PROVIENCE,
RICHARD MACK, AND GERALD AND ALECIA WILCOX,
INTERESTED PARTIES, TO DEBORAH RYAN, WALTER SWIFT, CRISTOBAL
MENDOZA and ANNICA CUPPETELLI, INTERESTED PARTIES, SECOND
SUPPLEMENTAL BRIEF [Dkt. #6764] IN SUPPORT OF THE INSTANT CREDITORS'
PREVIOUSLY-FILED OBJECTIONS [Dkts. #4224 and #4618] TO DEBTOR, CITY OF
DETROIT'S, PLAN FOR THE ADJUSTMENT OF DEBTS OF THE CITY OF
DETROIT, AND CERTIFICATE OF SERVICE**

NOW COME DWAYNE PROVIENCE, RICHARD MACK, AND GERALD and
ALECIA WILCOX, interested parties, and concur in Interested Parties, DEBORAH RYAN,
WALTER SWIFT, CRISTOBAL MENDOZA and ANNICA CUPPETELLI'S Second
Supplemental Brief, [Dkt. #6764]. In support of the instant concurrence, the interested parties
state the following:

1. Interested parties, PROVIENCE, MACK, and WILCOX, incorporate by reference
their previously filed objections [Dkt. #4224 and #4618] to the City of Detroit's Plan of
Adjustment and all Amended Plans.

2. Interested party, DWAYNE PROVIENCE, was wrongfully convicted of second-
degree murder in 2001, and spent nearly 10 years in prison as a result of a Detroit police
sergeant's violation of Provience's constitutional right to due process. Specifically, the
individual officer withheld material exculpatory and impeachment evidence from the prosecutor
and defense attorney showing that the police officer, as Officer-in-Charge of the homicide



investigation, knew Provience was not the killer.

3. Interested party, RICHARD MACK, suffered permanent and debilitating back and neck injuries when he was assaulted by two Detroit police officers after seeking their assistance in a domestic violence situation involving his daughter and her boyfriend. MACK has undergone multiple spinal fusion surgeries as a result of the individual officers' use of excessive force.

4. Interested parties GERALD and ALECIA WILCOX, suffered damages as a result of GERALD WILCOX being jailed for two weeks and charged with armed robbery, when the individual officer in charge of the investigation, who knew he had arrested the wrong man, went on vacation while WILCOX was in jail. WILCOX was set free when the officer admitted at the preliminary exam that he knew he had arrested the wrong man.

5. The individual officers in each of the three cases set forth above are being sued in their individual capacities. As set forth in the Ryan Second Supplemental Brief, [Dkt. #6764], the right to redress for the instant Petitioners derives from the Constitution itself, not the statutory vehicle, 42 U.S.C. § 1983. Moreover, the individual officers, sued in their individual capacities, are not entitled to have their individual misconduct discharged in their employer's bankruptcy. Furthermore, the issue of whether the Debtor's contractual obligation to an individual officer for the officer's § 1983 liability is dischargeable, is best left to another day.

WHEREFORE, for the reasons stated above, these Petitioners respectfully request that this Court issue an Order stating that the City's most recent Proposed Plan of Adjustment, to the extent it reduces or diminishes § 1983 claimants' damages claims, is unconstitutional.

Respectfully submitted,

OLSMAN, MUELLER, WALLACE
& MacKENZIE, P.C.

/s/Wolfgang Mueller

WOLFGANG MUELLER (P43728)

Attorney for Creditors, Dwayne Provience,
Richard Mack and Gerald and Alecia Wilcox

2684 W. 11 Mile Road

Berkley, MI 48072

(248) 591-2300

wmueller@olsmanlaw.com

Date: August 20, 2014

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re

Chapter 9

CITY OF DETROIT, MICHIGAN,

Case No. 13-53846

Debtor.

Hon. Steven W. Rhodes

CERTIFICATE OF SERVICE

I hereby certify that on August 20, 2014, I served the following Paper:

Brief in Concurrence of Creditors Dwayne Provience, Richard Mack, and Gerald and Alecia Wilcox, Interested Parties, to Deborah Ryan, Walter Swift, Cristobal Mendoza and Annica Cuppetelli, Interested Parties, Second Supplemental Brief [Dkt # 6764] in Support of the Instant Creditors' Previously Filed Objections [Dkts. #4224 and #4618] to Debtor, City of Detroit's, Plan for the Adjustment of Debts of the City of Detroit

on the following parties:

David G. Heiman
Heather Lennox
Thomas A. Wilson
JONES DAY
North Point
901 Lakeside Avenue
Cleveland, OH 44114
dgheiman@jonesday.com
hlennox@jonesday.com
tawilson@jonesday.com

Bruce Bennett
JONES DAY
555 South Flower Street
Fiftieth Floor
Los Angeles, CA 90071
bbennett@jonesday.com

Jonathan S. Green
Stephen S. LaPlante
MILLER, CANFIELD,
PADDOCK AND STONE, PLC
150 West Jefferson
Suite 2500
Detroit, MI 48226
green@millercanfield.com
laplante@millercanfield.com

by the following means: the Court's ECF system.

Respectfully submitted,

/s/Wolfgang Mueller
Attorney for Creditors, Dwayne Provience,
Richard Mack and Gerald and Alecia Wilcox
2684 West Eleven Mile Road
Berkley, MI 48072
(248) 591-2300
wmueller@olsmanlaw.com
(P43728)